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6	UNITED STATES DISTRICT COURT
7	DISTRICT OF NEVADA
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9	GREG MLACNIK,)
10	Petitioner, 3:08-cv-00164-LRH-VPC
11	vs. ORDER
12	BILL DONAT, et al.,
13	Respondents.
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15	Petitioner filed a first amended petition for writ of habeas corpus (docket #19) on August 5,
16	2009 and respondents have moved to dismiss the petition (docket #22). The court issued it order
17	regarding the importance of responding to a motion to dismiss and outlined the time-line for such a
18	response (docket #26). Petitioner has since failed to respond to the motion or to seek additional time
19	to do so.
20	Under Local Rule 7-2(d), failure to file points and authorities in response to any motion shall
21	constitute a consent to the granting of the motion.
22	Certificate of Appealability
23	In order to proceed with an appeal from this court, petitioner must receive a certificate of
24	appealability. 28 U.S.C. § 2253(c)(1). Generally, a petitioner must make "a substantial showing of
25	the denial of a constitutional right" to warrant a certificate of appealability. <i>Id.</i> The Supreme Court
26	has held that a petitioner "must demonstrate that reasonable jurists would find the district court's
27	assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484

28 (2000).

Where a court has dismissed a petitioner's habeas corpus petition on procedural grounds, 1 2 however, the determination of whether a certificate of appealability issues becomes a two-part test. 3 The Supreme Court has stated that under such circumstances: 4 A COA should issue when the prisoner shows...that jurists of reason would find it debatable whether the petition states a valid claim of the 5 denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. 6 7 Id. See also Miller-El v. Cockrell, 537 U.S. 322, 337-38 (2003). Therefore, in order to obtain a 8 COA in cases dismissed on procedural grounds, petitioner has the burden of demonstrating both that 9 he was denied a valid constitutional right and that jurists of reason would find it debatable whether 10 the court's procedural ruling was correct. In this case petitioner as much as consented to dismissal of 11 his petition by failing to oppose the respondents' motion, despite having been specifically warned of the consequences of such an action. As a result, "a reasonable jurist could not conclude either that 12 13 the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." Slack, 529 U.S. at 484. 14 IT IS THEREFORE ORDERED that respondents' first motion to dismiss (docket #22) is 15 16 GRANTED. The Clerk shall ENTER JUDGMENT ACCORDINGLY. 17 DATED this 8th day of February, 2010. Kihi 18 19 20 LARRY R. HICKS UNITED STATES DISTRICT JUDGE 21 22 23 24 25 26 27 28 2